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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~648~~ 684

WILMER D. REKEWEG,

Petitioner,

vs.

OHIO STATE BAR ASSOCIATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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WILMER D. REKEWEG,

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE AND ARGUMENT

These disciplinary proceedings were commenced by the filing of a complaint by the Ohio State Bar Association with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with Rule XVIII, paragraph 8, of the Rules of the Supreme Court of Ohio (a copy of Rule XVIII is attached hereto as Appendix A).

The complaint against Petitioner charged him with misconduct as an attorney at law while acting as fiduciary and attorney in four cases involving decedent's estates. The complaint contained eight specifications of misconduct which charged Petitioner with commingling funds belonging to these estates with his own personal funds and converting those funds to his own use in violation of Canon 11

of the Canons of Professional Ethics as adopted by the Supreme Court of Ohio and in violation of Section 2907.34, Revised Code of Ohio.

Prior to the filing of the complaint, the Ohio State Bar Association followed its procedure established to comply with paragraph 8 of Rule XVIII. This procedure requires that the Committee on Legal Ethics and Professional Conduct (37 members) make a thorough investigation of the professional conduct of any lawyer whose questionable conduct has come to the attention of that committee. If that committee determines after such investigation that the lawyer thus investigated has been guilty of unethical conduct, it makes its recommendation for the filing of a complaint to the Executive Committee of the Ohio State Bar Association. The Executive Committee (20 members) thoroughly reviews the findings of the Committee on Legal Ethics and Professional Conduct and if it approves the recommendation, a complaint is then filed with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with Rule XVIII.

A lawyer's professional conduct may be brought to the attention of the Ohio State Bar Association's Committee on Legal Ethics and Professional Conduct in several ways: (1) by direct complaint of an alleged injured party, (2) by reference from a fellow lawyer, (3) by such general knowledge in the community as to arouse the interest of the Bar or (4) by referral from the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with paragraph 3 of Rule XVIII.

The Petitioner's conduct in this case was brought to the attention of Respondent by Mr. John McMillan, then Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, with the request that Respondent's Committee on Legal Ethics and Profes-

sional Conduct investigate Petitioner's conduct and practice in handling the estates involved in this case, and others.

Subsequent to the request for an investigation by Mr. McMillan, Respondent was informed of Petitioner's removal as Executor of the Estate of John D. Prior, deceased, by the Probate Court of Paulding County, Ohio, Judge Cathryn Harrington, sitting by assignment. Reason for removal—failure to properly account for his trust. Respondent also received a copy of the journal entry signed by Judge William L. Day, Probate Court, Paulding County, stating that Petitioner had admitted misuse of the funds of the Estate of Bertha Majors, deceased, and his resignation as administrator had been accepted by the court.

The Ohio State Bar Association employs Martin Hegele as Investigator and John R. Welch as Counsel to the Committee on Legal Ethics and Professional Conduct to make preliminary investigation of all disciplinary matters coming to the attention of the Association. Mr. Hegele made such a routine investigation of Petitioner's activities. He reported his preliminary findings to the Committee on Legal Ethics and Professional Conduct in September 1963. The Committee, considering that a more detailed investigation was indicated, appointed Mr. Thomas R. Spellerberg, Tiffin, Mr. William F. Hecker, Cleveland, Mr. Robert J. Kuhn, Lima and Mr. Welch as the investigating subcommittee. This subcommittee conducted intensive investigation over a period of almost a year. Following a detailed report of that subcommittee, the Committee on Legal Ethics and Professional Conduct recommended to the Executive Committee of the Association that a complaint be filed against Petitioner for unethical conduct. The Executive Committee considered the recommendation and the evidence in support of the complaint and approved it. The

complaint was duly filed. A copy of the complaint was served on Petitioner.

After a complaint is filed with the Board of Commissioners on Grievances and Discipline, the Chairman of that Board is obliged to appoint a panel of three members of that Board, none of whom reside in the Respondent's (Petitioner here) county of residence, to hear the matter. In this instance the Chairman appointed Mr. John R. Py, Chairman of the panel, of Sandusky, Ohio; Mr. Robert F. Driedame, Cincinnati, Ohio and Mr. Fred A. Smith of Toledo, Ohio, and the complaint came on for hearing on May 3, 1965.

The Petitioner was represented before, during and after the hearing by John J. Chester, Columbus, Arthur S. Newcomer and John B. Dwyer, Bryan, all practicing attorneys in Ohio. The hearing in this case consumed two full days. The record consists of 394 pages of testimony by eleven witnesses, and some forty-one exhibits.

The Petitioner had the opportunity to and did cross examine every witness who gave testimony against him at the hearing. It is, therefore, patently false and misleading for Petitioner to say (as he does at page 23 of his petition) that "The Petitioner was never provided with an opportunity, by preliminary hearing or otherwise, to learn who his accusers were." If there was an "accuser" in the sense indicated by Petitioner, it was the Ohio State Bar Association who did and still does confront the Petitioner with charges of unethical conduct. However, it was the witnesses who gave evidence against him and he confronted and cross-examined every witness produced by the Respondent. All this is absolutely clear from the record.

On January 10, 1966, eight months after the hearing, the Board of Commissioners on Grievances and Discipline filed

its written findings of fact and recommendations in the Supreme Court of Ohio and served a copy on Petitioner.

The Board found that Petitioner knowingly commingled substantial trust funds with his personal funds in violation of Canon 11 of the Canons of Professional Ethics and Section 5 (a) of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio, and did further commit the crime of embezzlement as defined in Section 2907.34 of the Revised Code of Ohio, being a crime involving moral turpitude. (Section 5 (a), Rule XVIII, defines misconduct.) The Board recommended that Petitioner be permanently disbarred from the practice of law, pursuant to Section 6 (a), Rule XVIII.

On January 10, 1966, the Supreme Court of Ohio ordered Petitioner to show cause why the recommendation of the Board of Commissioner's should not be confirmed and disciplinary order entered. At this stage in the proceedings, Petitioner may object to the findings of fact by the Board of Commissioners and make his written argument to the Supreme Court of Ohio on law and fact. Such a brief was filed by Petitioner. An Answer Brief was filed by Respondent. On March 8, 1966, the case was orally argued to the Court with one half hour to a side.

On April 27, 1966, the Court announced its decision confirming the report of the Board and rendering judgment disbarring Petitioner. 6 Ohio St. 2d, 128. (The Opinion is printed at page 31 of the Petition.)

We submit that these proceedings before the Supreme Court of Ohio are free from any due process defect. Petitioner was given notice of the charges against him. He was given an opportunity to and did defend himself before the Board of Commissioners of the Supreme Court of Ohio and before the Court itself. Petitioner confronted and cross-

examined every witness who testified against him. He was represented throughout the entire proceedings by competent and prominent counsel of his own selection. Petitioner was given the opportunity to and did present written and oral argument to the Commissioners and to the Supreme Court of Ohio. Procedural due process does not require more.

For the above reason and the following reasons the writ sought here should not be granted.

1. Petitioner has not complied with Rule 23 (1) (f) of this Court. His Petition does not specify the stage in the proceedings and in the court below at which, and the manner in which the federal questions sought to be reviewed were raised; the method of raising them and the way in which they were passed upon by the court.

In fact, with the possible exception of the first question, the seven "Questions Presented" here for review were not presented to the court below.

2. The Petitioner contends that he was denied a trial by an impartial tribunal. He attacks the hearing panel on the ground that they were prominent attorneys, concerned with the enforcement of legal ethics, associated with the bar association which prosecuted him, and that they were not compensated for their services. (Petition pages 8-9.) Petitioner's argument that men of such background must be biased against him merely states his conclusion. He does not point to any evidence in the record or even outside the record which supports his conclusion. And, obviously, the Petitioner does not recognize that there are members of the Bar who believe that they owe some of their time to the upbuilding of the profession to which they belong. Be that as it may, the fatal defect in Petitioner's argument is

that it completely ignores the Ohio law which controls disciplinary proceedings.

Petitioner was not "tried" by the hearing panel. He was "tried" by the Supreme Court of Ohio as that Court has stated on at least two separate occasions.

In *Cleveland Bar Association v. Pleasant* (1958) 167 Ohio St., 325-335, 148 NE 2d 493, cert den 358 U.S. 842, 3 L ed 2d 76, the court said:

> "There can be no question now of the inherent power of this court as to the disciplining of attorneys and, therefore, of its power to provide by rule the procedure in reference to hearings upon such questions. That is all that was contemplated in the establishment of the Board of Commissioners on Grievances and Discipline. Such board or its panels have no power to discipline an attorney, except with reference to a private reprimand, and surely that can not constitute a judgment, for the power to give such a reprimand would be inherent without any authorization by this court. *As to any other disciplinary action, all that the board can do is to investigate and make findings of fact and recommendations, and the only order or decision is made solely by this court.*" (Emphasis added)

To the same effect is *Mahoning County Bar Association v. Ruffalo* (1964) 176 Ohio State 263, 199 NE 2d 396, cert den 379 U.S. 931, 13 L ed 2d 342, where the court said:

> "In cases of this kind, the board of commissioners acts for and on behalf of this court. In doing so, it makes recommendations as to the facts which should be found and the action which should be taken by this court. *However, this court has full responsibility for*

determining what the facts are and what action should be taken on those facts."

The Supreme Court of Ohio has determined that Mr. Rekeweg committed acts which violated Canon 11* of the Canons of Professional Ethics of the American Bar Association as approved and adopted by that court. (Rule XIX, Appendix B.) It has also determined that Mr. Rekeweg's misconduct warrants disbarment, and has disbarred him. (Court's opinion, page 31 of Petition.)

The evidence in this case is that Mr. Rekeweg was both fiduciary and attorney in the administration of four decedent's estates. He had complete control of the funds of those estates. As found by the Supreme Court of Ohio:

> "the evidence displayed a course of conduct by respondent of transferring funds from estate or trust accounts and commingling them with his personal account. His excuse was that the funds so transferred were fees. The board found that in some cases there was a complete disparity between the amounts transferred and the total value of the estates to the point that the board could not believe that respondent could conscientiously feel that these amounts could ever be justified as fees."

In one estate the evidence is that the total assets of the estate amounted to $8,012.61; and the undisputed evidence is that over a period of two years Mr. Rekeweg transferred $6,655.00 from his estate account to his personal account. (R. 155, 226, 229.) Mr. Rekeweg's defense was that these

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Canon 11 provides:

* The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him.

funds were taken as fees. At the instance of dissatisfied heirs, and after hearing, Mr. Rekeweg was removed as administrator of this estate. He admitted to the court that he had misused funds of the estate and asked for a little time to dispose of some stock to replace the funds taken. (R. 116-325.) Yet, Mr. Rekeweg's defense to the charge that he had misused funds of this estate was that he understood the court to mean that he had taken too much as fees. (R. 160.)

In another estate (Carl Charlie Williams, deceased), the evidence is that Mr. Rekeweg made an out-of-court settlement of a wrongful death claim for $35,000.00. On application by Mr. Rekeweg, the court apportioned this sum $32,500.00 to the next of kin (an illiterate widow and five minor children) and $2,500.00 to decedent's estate for his personal injury. (Rel. Ex. 40.)

On the day that the settlement was approved, Mr. Rekeweg deposited the $35,000.00 in the bank and withdrew $8,750.00 as his fee. Three weeks later, Mr. Rekeweg withdrew an additional $4,750.00 from his fiduciary account and deposited that sum in his personal account. (Had he not done so his personal account would have been overdrawn by $1,298.60.) (Rel. Ex. 9-92.) Mr. Rekeweg did not account to the court for this transfer of funds.

Mr. Rekeweg's defense to the charges of commingling and conversion of those funds was that the $4,750.00 was his fee as administrator and attorney for the estate. (R. 164-165.) But according to Mr. Rekeweg's own account with the court, the total assets of the decedent's estate were $2,875.00: $2,500.00 cash and $375.00 assigned value of decedent's furniture. (Rel. Ex. 4.)

The evidence with respect to the other charges is the same. In all cases, when an issue was raised about Mr.

Rekeweg's transfers from his estate accounts to his personal account, his excuse was that these transfers were fees and he would offer to reimburse the fiduciary accounts.

Misappropriation of funds entrusted to an attorney is a gross violation of general morality as well as professional ethics and is likely to endanger the confidence of the public in the legal profession and in the administration of justice. When an attorney is guilty of habitual misuse of funds of his clients, as in this case, disbarment should be ordered to protect the public and those charged with the administration of justice.

There is no reason to analyze the law presented by the Petitioner in support of his Petition for a Writ of Certiorari. The Petitioner had a full and fair hearing before an imparital tribunal, the Supreme Court of Ohio.

The Ohio State Bar Association respectfully submits that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three (3) copies of the foregoing brief have been mailed by first class mail

with postage prepaid to attorneys for Petitioner, Bernard A. Berkman, Larry S. Gordon and Joshua J. Kancelbaum, respectively at their offices located at The Superior Building, Cleveland, Ohio.

/s/ THOMAS R. SPELLERBERG
Of Counsel for Respondent.

APPENDIX A
RULE XVIII[2]
DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

(1) Creation of Board of Commissioners on Grievances and Discipline. There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. Said Board of Commissioners shall consist of seventeen (17) members of the Bar of this Court, appointed by this Court. One member of such Board shall be appointed from each of the following districts: *District 1,* comprising Butler, Clermont, Clinton, Hamilton and Warren Counties. *District 2,* comprising Darke, Miami, Montgomery, Preble and Shelby Counties. *District 3,* comprising Defiance, Fulton, Hancock, Henry, Paulding, Putnam, Van Wert, Williams and Wood Counties. *District 4,* comprising Lucas County. *District 5,* comprising Crawford, Delaware, Marion, Morrow, Ottawa, Sandusky, Seneca and Wyandot Counties. *District 6,* comprising Champaign, Clark, Fayette, Greene, Logan, Madison and Union Counties. *District 7,* comprising Franklin County. *District 8,* comprising Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pickaway, Pike, Ross, Scioto and Vinton Counties. *District 9,* comprising Coshocton, Fairfield, Knox, Licking, Muskingum and Perry Counties. *District 10,* comprising Ashland, Erie, Holmes, Huron, Lorain, Medina, Richland and Wayne Counties. *District 11,* comprising Portage and Summit Counties. *District 12,* com-

[2] Same as former Rule XXVII as amended March 11, 1964.

prising Cuyahoga County. *District 13,* comprising Ashtabula, Columbiana, Geauga, Lake, Mahoning and Trumbull Counties. *District 14,* comprising Carroll, Stark and Tuscarawas Counties. *District 15,* comprising Belmont, Guernsey, Harrison, Jefferson and Monroe Counties. *District 16,* comprising Allen, Auglaize, Hardin and Mercer Counties. *District 17,* comprising Athens, Hocking, Meigs, Morgan, Noble and Washington Counties. The term of office of each member of said Board of Commissioners shall be three (3) years, beginning on January 1 next following his appointment. Provided, however, that any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall continue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners, and designate a Secretary, each of whom shall have authority to execute journal entries on behalf of the Board of Commissioners and of panels thereof.

(2) Jurisdiction of Board. The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, make findings and submit recommendations to this Court, as hereinafter provided.

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an

attorney and counselor at law, person under suspension for an indefinite period from the practice of law, or judge, or

(b) concerning the mental illness of any attorney and counselor at law or judge, or

(c) relating to petitions for reinstatement as an attorney and counselor of law in this State, or

(d) upon reference by this Court of conduct affecting any proceeding under this rule, where the acts allegedly constitute a contempt of this Court but did not take place in the actual presence thereof, whether by willful disobedience of any order or judgment of this Court or the Board of Commissioners, by interference with any officer of this Court in the prosecution of any duty, or otherwise.

(3) Referral for Investigation. The Board of Commissioners may refer to the Grievance Committee of the appropriate local bar association or to the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association any matters coming to its attention for investigation, as hereinafter provided.

(4) Application of Rule; Authority and Duty of Local Committees. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges; all proceedings for the discipline of such attorneys and counselors at law, persons under suspension for an indefinite period or disbarred from the practice of law, and judges; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule. Any committee authorized

by any regularly organized bar association or by the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention, and may cause a complaint to be filed pursuant to this rule in cases where misconduct, contempt, or mental illness is found; provided, however, that nothing herein shall affect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.

The Board of Commissioners or any member thereof, the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall neglect or refuse so to assist in any such investigation or so to testify.

(5) Definitions.

(a) Misconduct. Misconduct shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the commission or conviction of a crime involving moral turpitude.

(b) Mental Illness. Mental illness shall mean the condition defined in Section 5122.01 (A), Revised Code.

(6) Manner of Discipline. Each attorney and counselor at law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) a public reprimand, or

(d) a private reprimand.

(7) Effect of Discipline. A person disbarred shall never thereafter be readmitted to the practice of law in this State. A person who shall have voluntarily surrendered his license to practice and thereafter has been reinstated in the manner hereinafter provided and a person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(8) The Complaint; Where Filed; By Whom Signed. A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and

supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint, and shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

(9) Duty of the Board Upon Filing of the Complaint.

(a) Notice to Respondent. The Secretary of the Board of Commissioners shall send a copy of the complaint by registered mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon counsel of record named in the complaint.

(b) Suspension of Right to Practice Pending Disposition of Misconduct Complaint. After an answer has been filed or the time for answer has elapsed, the Court shall entertain such recommendation as the Board may make for the immediate suspension from the practice of law pending disposition of the complaint if the complaint alleges the conviction of a crime involving moral turpitude supported

by a certified copy of the judgment entry of the Court convicting the Respondent.

(c) Mental Illness Suspension. After an answer has been filed or the time for answer has elapsed, if the complaint or answer alleges mental illness supportd by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, or if the Board finds existing mental illness after an examination as provided in (d) hereof, the Board shall forthwith certify the complaint to this Court and the Court may suspend the Respondent from the practice of law.

(d) Examination. If the complaint or answer alleges existing mental illness unsupported by a journal entry of a court of competent jurisdiction or mental illness is otherwise placed in issue, the Board or panel may, on its own motion or on motion by either party, order a medical or psychiatric examination of Respondent by one or more physicians, designated by the Board or panel, whose findings shall be presented to the Board or panel as evidence and made available to both parties.

(e) Termination. Any suspension under this section may be terminated on Respondent's application to the Board and a showing of removal of the cause for the suspension, which is certified by the Board to, and affirmed by, the Court.

(10) Hearing by Panel of Three Commissioners. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel.

Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

(11) Dismissal of Complaint. If the panel finds that the complaint or evidence is insufficient, the panel shall make its certified report of the proceedings and recommendations to the Board of Commissioners which shall review the proceedings, and shall dismiss the complaint, or refer the matter back to the panel for further hearing or the administering of a private reprimand, or may proceed upon the certified report of the proceedings before the panel. The Secretary of the Board of Commissioners shall give notice of a dismissal to the Respondent, all counsel of record, the Ohio State Bar Association, and the local bar association or associations of the county or counties in which the Respondent resides and maintains his office, and of the county or counties from which the complaint arose.

If a written request for a conference with the Supreme Court of Ohio is made by the Relator within twenty (20) days after the issuance of such notice, Relator, Respondent and a member of the hearing panel will be called to confer with the Court.

(12) Private Reprimand; Duty of Panel. If the panel finds and determines that the Respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand and such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and

organizations that would have received notice if the complaint had been dismissed by such panel.

If a written request for a conference with the Supreme Court of Ohio is made by the Relator within twenty (20) days after the issuance of such notice, Relator, Respondent and a member of the hearing panel will be called to confer with the Court.

(13) Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(14) Review by Entire Board of Comissioners; Board to Administer Private Reprimand. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received

notice if the complaint had been dismissed by the panel that heard the matter.

(15) Public Reprimand; Suspension or Permanent Disbarment; Duty of Board After Review. If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(16) Show Cause Order Issued by the Court to Respondent. On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

(17) Response to Order to Show Cause and Objections. The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued, and a brief in support of such objections, to-

gether with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

(18) Answer Briefs. Answer briefs together with proof of service shall be filed within fifteen (15) days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by rules of this Court for original actions.

(19) Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order. After hearing on objections, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent (at his last known address), to the Ohio State Bar Association, to the local bar association or associations in the county or counties in which the Respondent resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio; the United States Court of Appeals for the Sixth Circuit; and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio

State Bar Association and in a publication, if any, of the Relator local bar association.

If a displinary order of the Court provides for a permanent disbarment or suspension for an indefinite period from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

(20) Proceedings Private; Exceptions. All proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private except

(a) Where the Respondent shall request in writing that they be public, or

(b) Where proceedings filed with the Supreme Court of Ohio recommend the discipline of permanent disbarment or suspension for an indefinite period, or

(c) Where any disciplinary matter is heard by the Supreme Court of Ohio, other than in conference, on objections to the findings or recommendations of the Board of Commissioners.

(A copy of the findings, recommendations and actions of the Panel and the Board of Commissioners in each case shall be given to any member of the Court upon request.)

(21) Petition for Reinstatement. No petition for reinstatement to the practice of law shall be entertained by this Court and the same may not be filed in this Court, within a period of two (2) years after the entry of an order suspending for an indefinite period the Petitioner from the practice of law in this State, or within a period

of two (2) years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

(22) Contents of Petition for Reinstatement. Subject to the foregoing restrictions, any person who has been suspended for an indefinite period from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when such suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who were, or would be, entitled, under this Rule, to receive from the Clerk of this Court certified copies of the disciplinary order of this Court against Petitioner resulting in his suspension; and the name of the local bar association or associations in the County in which he resides at the time of the filing of the petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that he possess all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his orignial admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against him.

(23) Costs to be Deposited with Petition for Reinstatement. Such petition shall be accompanied by a deposit in

an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

(24) Requisites for Reinstatement. No person shall be reinstated unless he has established by clear and convincing evidence that he possess all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against the Petitioner. In such case the order of reinstatement may be conditioned upon the Petitioner's subsequently taking and passing a regular bar examination of this Court and thereafter taking the prescribed oath of office.

Paragraphs C and D of Section 6 of Rule XVII shall not apply to any petitioner with respect to whom such an order for reinstatement may have been issued.

(25) Petition for Reinstatement Referred to Board of Commissioners. Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

(26) Hearing of Petition by Panel of Three; Hearing Shall Be Public; Who May Appear; Appeal to Court from

Denial of Petition by Board of Commissioners. The Chairman of the Board of Commissioners shall appoint a hearing panel of three (3) Commissioners no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in Section (22) (c). Such hearing shall be public. Any interested person, any member of the Bar, and any representative of any local bar association or of the Ohio State Bar Association may appear before the hearing panel in support of or in opposition to the petition.

The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court or an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed.

The Board, in its discretion, may recommend that the Petitioner be required to take and pass one of the regular bar examinations as a condition to readmission. If the final report should recommend denial of the petition, the Petitioner shall have ten (10) days from receipt of notice of the date of filing such report to file objections thereto and brief in support thereof.

If the final report should recommend granting of the petition any person or organization referred to in Section (22) (c) shall have ten (10) days from the receipt of notice of filing of such report to file objections to the recommenda-

tions and brief in support thereof. The Court shall thereupon enter an appropriate order, which may include such provisions for reimbursement of the costs and expenses incurred in connection with the proceedings as the Court shall deem just.

(27) Manner of Service of Notices, etc. Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by registered mail.

(28) Quorum of Panel or Board. A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

(29) Clerk Is Agent for Service of Notices on Nonresident Attorney. Any nonresident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State makes the Clerk of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law or judge, pursuant to this Rule.

(30) Manner of Service on Clerk; Record of Such Service Not a Public Record. All such notices shall be served by the

Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by registered mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the service upon said Clerk of this Court, addressed to such Respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any proceeding in which notice has been given as provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of this Court shall keep a record of the day and hour of the service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

(31) Power to Issue Subpoenas. In investigations and proceedings under this rule, upon application by the Chairman, Vice Chairman, Secretary, or Counsel of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a certificate under Section (8) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or any sub-committee thereof, or before the Grievance Committee of any regularly organized local bar association in the State, or before

a hearing panel of the Board of Commissioners. All such subpoenas shall be issued in the name and under the seal of this Court and shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

(32) May Order Depositions. The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

(33) Effect of Refusal to Testify. The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of this Court and shall be punishable accordingly.

(34) Rules of Evidence. All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

(35) Docket of Complaints. The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

(36) Board May Prescribe Rules. The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(37) Rule to be Liberally Construed. The process and procedure under this Rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time

prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any non-prejudicial irregularity or for any error not resulting in a miscarriage of justice. This Rule and such regulations relating to investigations and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the Courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this Rule. To the extent that application of this amended Rule to such pending proceedings may not be practicable, the rules and regulations in force at the time this amended Rule became effective shall continue to apply.

APPENDIX B
RULE XIX[3]
RULES OF PROFESSIONAL CONDUCT

Section 1. These rules of professional conduct shall be binding upon all members admitted to practice law in the State of Ohio, and the wilful breach thereof shall be punished by reprimand, by suspension or by disbarment, as provided in Rule XVIII of the Rules of Practice.

The Canons of Professional Ethics and the Canons of Judicial Ethics of the American Bar Association as amended are adopted; and nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation thereof. (The Canons of Professional Ethics were adopted November 13, 1952, and are set forth in 175 Ohio State Reports. The Canons of Judicial Ethics as amended were adopted January 27, 1954, and are set forth in 160 Ohio State Reports.)*

Section 2. An attorney at law shall not advertise or otherwise solicit professional employment. This rule shall not apply to the publication or use of ordinary professional cards or conventional listings in legal directories and newspapers.

Section 3. An attorney at law shall not employ another to solicit or to obtain or remunerate another for soliciting or obtaining professional employment for him.

Section 4. An attorney at law shall not acquire an interest adverse to a client in a subject matter concerning which the attorney has been employed.

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[3] Same as former Rule XXVIII.

* Canons of Professional and Judicial Ethics are set forth also in 176 Ohio State Reports.

Section 5. An attorney at law shall not, directly or indirectly, without the consent of his client, purchase property at a probate, foreclosure or judicial sale in an action or proceeding in which he appears as attorney for a party.

Section 6. An attorney at law shall not represent conflicting interests except with the consent of all parties concerned.

Section 7. An attorney at law shall not accept professional employment without first disclosing to his prospective client his relation, if any, with the adverse party, and his interest, if any, in the subject matter of the employment.

Section 8. An attorney at law shall not accept employment adverse to a client or former client relating to a matter in reference to which he has obtained confidential information by reason of and in the course of his employment by such client or former client.